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# QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

## Report of the Secretary-General on human rights and forensic science submitted pursuant to Commission on Human Rights resolution 1992/24

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## Introduction

1. At its forty-eighth session, the Commission on Human Rights adopted resolution 1992/24 in which it noted that various reports submitted to it referred to the exhumation and identification of probable victims of human rights violations and related abuses, as well as to the corresponding technical and practical difficulties encountered in that process. It also noted that a number of Governments as well as special rapporteurs and working groups had requested or mentioned the possibility of making use of expertise in forensic science. The Commission took into consideration the limited human and financial resources of the Secretary-General for any initiative in this regard and therefore decided that it would be desirable to create, under United Nations auspices, a standing team of forensic experts and experts in other relevant disciplines, to be enrolled on a voluntary basis worldwide, who could be requested by Governments concerned, through the Secretary-General, to assist, on the basis of professional objectivity and in a humanitarian spirit, in the exhumation and identification of probable victims of human rights violations or in the training of local teams for the same purpose. In this connection, the Commission requested the Secretary-General, within existing resources, to enter into consultation with appropriate professional organizations in the field of forensic science and related disciplines with a view to studying the practical and financial viability of such a scheme and to developing workable arrangements for its management. The Commission further asked the Working Group on Enforced or Involuntary Disappearances to render active assistance in this regard and the Secretary-General to inform the Commission at its forty-ninth session on progress made in this matter and to make such recommendations as he might consider appropriate.

2. Fact-finding procedures established by the Commission on Human Rights and other mechanisms dealing with human rights violations have repeatedly stressed the importance of proper medico-legal investigations into deaths which occurred under circumstances suggesting human rights violations. They have called for forensic expertise in connection with tasks such as the identification of remains found in mass graves or the assessment of the reasons for the death of a person purported to be a victim of extrajudicial, summary or arbitrary execution or disappearance. Medico-legal examinations are also required in order to determine the nature of injuries or marks left on the body of persons alleged to have been tortured or to determine the filiation of children of disappeared persons. The need for such expertise has been emphasized in reports to the Commission, in particular by the Working Group on Enforced or Involuntary Disappearances, as well as by the Special Rapporteur on extrajudicial, summary of arbitrary executions, the Special Rapporteur on the situation of human rights in occupied Kuwait and the Special Rapporteur on the situation of human rights in Iraq.

3. In effect, despite the international consensus on the importance of observing and protecting human rights, gross violations persist in numerous countries. In particular, extrajudicial executions and disappearances affecting such fundamental rights as the rights to life, physical integrity and recognition as a person before the law - with its subsequent effects on many other rights enshrined in the Universal Declaration of Human Rights and stipulated in the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights - continue to be a frequent occurrence.

There is often a lack of adequate, if any, official investigations into such cases, particularly when they are perpetrated by government forces. Aside from the political and practical reasons involved, adequate investigations may also be precluded by the fact that the bodies have been disposed of in a manner that prevents their use as evidence. For instance, bodies are sometimes burnt, thrown into rivers or seas or buried in shallow pits without any identification; they are sometimes blasted and the remains covered with soil or left uncovered as intimidating evidence of violence. In other cases, the killers deliberately mutilate the body before or after death, to thwart identification or to intimidate others.

4. Another important contribution of forensic scientists extends not only to the dead, but also to the living. For example, the Working Group on Enforced or Involuntary Disappearances repeatedly reported on cases in which the military authorities in Argentina or other persons involved in disappearances had arranged for the adoption of children of disappeared persons without the knowledge and consent of their close relatives, in particular the grandparents. (See, in particular E/CN.4/1986/18, paras. 49-51; E/CN.4/1990/13, paras. 48 and 49 and E/CN.4/1993/25). In connection with these cases, the American Association for the Advancement of Science (AAAS) sent a mission to Argentina in 1984, at the request of the National Commission on Disappeared Persons (CONADEP), to assist in the identification of the remains of thousands of persons who were abducted and killed and later buried in mass and single unmarked graves from 1973 to 1983. Forensic experts trained Argentine anthropologists in modern technologies utilized for the identification of the remains. They also trained biologists and medical doctors in genetic methods aimed at providing proof of the real identity of children suspected to have been adopted illegally. In these cases, forensic scientists examine skeletal remains to determine whether a female victim may have given birth to a child. They then use genetic technology to establish the genetic relationship of the adopted children with their biological family.

5. Torture is another field in which forensic expertise is needed for the detection of human rights violations. Many international and local human rights organizations have been involved for years in producing explicit evidence of torture, (particularly in countries where abuses are widespread), which is often at variance with the official version provided by the authorities. Part of the daily work of the forensic pathologist is to determine and evaluate lesions with regard to their age, severity and causes and to distinguish between postmortal and intravital lesions. Forensic experts can also provide evidence on the use of psychotropic drugs or psychological torture; in forensic toxicology, detection of most of the drugs and poisons even in small quantities, is possible. However, in the absence of such determinative forensic evidence, many justified complaints are simply dismissed. It is in response to these problems that the work of forensic scientists will bring justice to all parties concerned.

## I. ACTIVITIES OF FORENSIC SCIENTISTS

6. The information received from non-governmental organizations involved in forensic activities indicates that forensic scientists work to combat human rights violations in three ways. First, they conduct medico-legal

investigations and research into incidents of death or torture. Second, they offer forensic training to other scientists and the judiciary to enable them to conduct such investigations themselves. Third, they endeavour to develop international standards to govern forensic investigations.

## A. Medico-legal investigations

7. The bodies of victims of summary executions or disappearances are often buried in shallow, unmarked graves. The remains found in these graves have become invaluable sources of information for forensic scientists in conducting their investigations. Forensic experts exhume these graves, perform initial and second autopsies, observe official inquests into and/or assist in court-ordered investigations of these suspicious deaths.

8. For the particularly difficult tasks of identifying the remains found in unmarked graves or any other places, the scientists employ multidisciplinary techniques involving medicine, anthropology, archaeology, sociology and law. Their tasks are threefold.

9. First, they conduct interviews and review documents to ascertain the location of the burial sites and the victims whose remains were probably buried in those sites. Scientists interview the people who live in the locality, sometimes grave-diggers who have been hired to bury the bodies, or civilians who may have heard rumours that a certain area is used as a burial site or who can provide information on other details leading to the identification of the victims. They also review documents, sometimes official records, which indicate where the bodies of certain individuals may have been interred. In some cases the governmental authorities kept detailed records on persons arrested by them. The Special Rapporteur on the situation of human rights in Iraq has reported that such records have been found with regard to a considerable number of persons followed, wanted or detained in northern Iraq, many of whom subsequently disappeared (E/CN.4/1993/45).

10. Second, they conduct the exhumation in the appropriate scientific manner in order to be able to obtain the optimal amount of information. Because information from both the remains themselves and from the spatial features of the graves is useful, it is crucial that both be preserved and documented carefully. Hence, archaeological techniques much like those used in excavating prehistoric sites are used. The graves are marked so that the exact coordinates of where each item is uncovered can be identified. The soil and dirt are removed in such a manner as to ensure that no piece of evidence, however minute (e.g., teeth, bullets, etc.), will be missed. More important, the remains are exhumed with the care and deliberation that will ensure the least amount of damage and alteration to the surface and placement of the remains. Failure to employ the proper method of exhumation can lead to the destruction of the evidence. For example, according to a report by the Argentine Team of Forensic Anthropology, this occurred in Argentina when bulldozers were run through some graves. As a result, no useful information could be obtained from either the spatial features of the graves or the remains themselves.

11. Third, they examine the remains to determine the cause and manner of death, and attempt to establish the identity of the victim. Forensic experts

analyse the skeletal remains to determine the physical characteristics of the victim, together with the cause, manner, time and place of death with a view to ascertaining the victim's identity. In doing so, they use techniques in pathology, odontology, radiology, etc. For instance, teeth and skeletal x-rays are taken to identify the victim. Also, anthropological studies may be undertaken to determine the skeleton's age at death, sex, race, stature and handedness. The results are then compared to the antemortem characteristics of the deceased. Forensic anthropologists can also distinguish various types of trauma to the bone which help determine the manner and cause of death.

12. For several years specialized non-governmental organizations have conducted missions to various countries in order to assist in the identification of the remains of victims of disappearances or extrajudicial executions. For example, experts sponsored by the AAAS worked in Argentina in 1984, at the request of the governmental Commission on Disappeared Persons (CONADEP); in El Salvador in 1988; in Chile in 1989; in Israel in 1989; in Bolivia in 1989; in El Salvador in 1989; again in Argentina in 1990; in Brazil in 1990; in Panama in 1991 and in Mexico in 1991. Similar missions were carried out by experts of the Danish Committee of Concerned Forensic Scientists and Physicians for the Documentation of Human Rights Abuses to Bolivia in 1986 and to El Salvador in 1988 and by the American non-governmental organization Physicians for Human Rights to Kenya in 1987; to Israel from 1988 to 1992 (10 different missions to observe and participate in the autopsies of the bodies of Palestinians who had died in detention or under suspicious circumstances); to Brazil in 1990; to Guatemala from 1990 to 1992 (five different missions for the exhumation and identification of dead bodies found in mass graves); to northern Iraq from 1991 to 1992 (two missions for the exhumation and identification of the dead bodies of Kurds presumed to have been victims of summary executions) and to the territory of the former Yugoslavia in 1992. The Argentine Team of Forensic Anthropology, in addition to its permanent involvement in the exhumation and identification of the remains of victims of disappearance in Argentina, performed, at the request of governmental bodies or non-governmental organizations, the following missions during the period 1975-1983: to the Philippines in 1986; to Bolivia in 1986, 1989 and 1992; to Chile in 1989; to the United States of America in 1989; to Nicaragua in 1990; to Venezuela in 1990; to Guatemala in 1991 and 1992; to Panama in 1992; to Iraq in 1992 and to El Salvador in 1992.

13. Forensic scientists cite three reasons why they investigate the graves of the victims of extrajudicial killings. First, from a humanitarian perspective, they hope to be able to inform the families of the deceased of the fate of their loved ones. Second, from a legal standpoint, they aim to uncover legally admissible evidence that will result in the conviction of those responsible for any crimes. Third, they hope to deter future violations by creating awareness, through forensic documentation and subsequent litigation, that those responsible will be held accountable for their actions.

14. The Working Group on Enforced or Involuntary Disappearances and other mechanisms of the Commission on Human Rights have repeatedly stressed that the impunity resulting from inadequate investigations is an important factor contributing to the persistence of human rights violations and to the lack of confidence in the ability or efficiency of national institutions to cope with crimes committed by government forces or groups linked to them. Even when

inquests are ordered by Governments, it is not always easy to ascertain the facts surrounding extrajudicial executions. The remains of victims who had previously disappeared are often found long after their executions took place. This complicates the identification of the body due to the natural decomposition of its soft tissue which erases evidence of trauma such as bruises, gunpowder burns or marks from beatings. In addition, eye-witnesses or other people who could provide evidence are frequently reluctant to do so for fear of reprisals. National mechanisms for the investigation of human rights abuses often fail to obtain conclusive evidence because they lack the necessary cooperation of certain authorities, particularly where the death may have been caused by the police, the army or agents related to them.

## B. Forensic training

15. At present, there are very few forensic scientists trained in the newest techniques currently available in this particular field of activity in comparison with the magnitude of disappearances and summary executions which have occurred over the years and which need to be investigated. Thus, the need for more well-trained and experienced forensic scientists is apparent, particularly in countries where these practices occur on a large scale.

16. In response to this need, forensic scientists have organized and conducted training workshops on the application of forensic sciences in conducting human rights investigations in different countries. Local physicians and scientists receive instruction in the exhumation and identification of skeletal remains, collection of antemortem data, autopsy procedures, investigation of allegations of torture, and application of international standards for the medico-legal investigation of suspicious deaths.

17. For a long time, and particularly during the last decade, some non-governmental organizations have been involved in training activities relating to forensic science in different regions of the world. Their courses dealt with modern technology applied to forensic science and with a new multi-disciplinary approach, which requires the participation of professionals from different fields of activity. Examples of this are the training workshops and courses carried out by the AAAS in Argentina in 1985, the Philippines in 1986, Costa Rica in 1989 and Guatemala in 1992; the Argentine Team of Forensic Anthropology in Uruguay in 1988, in Chile in 1989 and 1990, in Bolivia in 1989, Colombia in 1991 and in El Salvador in 1992; and the Danish Committee of Concerned Forensic Scientists and Physicians for the Documentation of Human Rights Abuses in the Philippines and Costa Rica. As a result of such efforts, many more scientists are now able to conduct medico-legal investigations in their home countries. Furthermore, national forensic anthropology teams have even been formed in countries such as Chile, Guatemala and Colombia.

## C. International medico-legal standards for investigations

18. In his report to the Commission on Human Rights (E/CN.4/1992/46) the Special Rapporteur on extrajudicial, summary or arbitrary executions stated that violations of the right to life persist in a variety of forms, ranging from isolated cases, through a more systematic pattern favoured by a "hands-off" policy on the part of the authorities, to killings and death threats as a

deliberate state policy which at times touches the limits of war crimes and genocide. While ensuring the rights of the victims of such human rights abuses and their families, the efforts made by the international community to curb the phenomenon of extrajudicial, summary or arbitrary execution in the long term must focus on ways and means of preventing them from taking place. These include a genuine will and effective measures to put into practice the international standards already existing, as well as endeavours to improve them where shortcomings are identified.

19. In view of the need to develop standards for obtaining evidence when ignored or covered up by the authorities, by official forces or by groups tolerated by them, the international community began formulating a set of principles and medico-legal standards for the investigation and prevention of extralegal, summary or arbitrary executions. That work, which started in the early 1980s, made considerable advances with the preparation of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions recommended by the Committee on Crime Prevention and Control at its tenth session in Vienna in 1988. The Principles were adopted by the Economic and Social Council in the annex to its resolution 1989/65, of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989. They are reproduced in the Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ST/CSDHA/12).

20. The Manual contains the general principles establishing a standard of investigation and also sets out procedures for the medico-legal investigations of suspicious deaths, an autopsy protocol, and sample charts and diagrams used in reporting injuries. It likewise describes methods for exhuming and examining skeletal remains and detecting post-mortem signs of torture.

21. The preparation of the Manual was greatly facilitated by the Minnesota Lawyers International Human Rights Committee, which obtained the assistance of an international group of experts in forensic science, lawyers, human rights experts and experts in other disciplines in the drafting of the Principles and in following up their implementation, the contents of which constitute the major part of the Manual. The AAAS and the Danish Committee of Concerned Forensic Scientists and Physicians for the Documentation of Human Rights Abuses also had an active participation in the preparation of the Manual.

## II. CONSULTATIONS CONDUCTED BY THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES WITH ORGANIZATIONS IN THE FIELD OF FORENSIC SCIENCE AND HUMAN RIGHTS

22. In compliance with Commission on Human Rights resolution 1992/24, in which the Working Group on Enforced or Involuntary Disappearances was requested to render active assistance to the Secretary-General in his consultations with a view to creating, under United Nations auspices, a standing team of forensic experts and experts in other relevant disciplines, the Working Group on Enforced or Involuntary Disappearances assisted the Secretary-General in his consultations with appropriate professional organizations in the field of forensic science. As a starting point for such consultations, the Working Group held meetings with the following four professional organizations known for their involvement in missions for the

exhumation and identification of corpses of probable victims of human rights violations as well as in training activities in this field: the American Association for the Advancement of Science, the Argentine Team of Forensic Anthropology, Physicians for Human Rights and the Committee of Concerned Forensic Scientists and Physicians of the University Institute of Forensic Medicine, Odense (Denmark).

23. The Working Group also contacted the following organizations or groups of experts: the Medical Action Group of Manila; the Mahidol University of Bangkok; the Association of Physicians for Humanism in Seoul; the Chilean Forensic Anthropology Group in Santiago; the Nucleo de Estudos da Violencia of São Paulo University, Brazil; and the Guatemalan Team of Forensic Anthropology.

24. Taking into account the suggestions received from those organizations, the Working Group elaborated a preliminary scheme, containing the following elements:

(a) A list of organizations with confirmed experience in human rights and forensic science will be maintained by the Working Group on Enforced or Involuntary Disappearances;

(b) These organizations will designate experts to work on the relevant activities envisaged by different programmes;

(c) Three types of programmes for forensic activities in relation to human rights can be foreseen: (i) programmes requested by Governments; (ii) programmes initiated at the request of special rapporteurs, working groups or other United Nations organs; (iii) programmes requested by non-governmental organizations. If a programme is requested by a Government, the Working Group will provide it with the names of the organizations listed. In the second case, special rapporteurs, working groups or other United Nations organs will decide, in consultation with the Governments concerned, on the organization that will carry out the forensic activities in connection with their respective mandates. With regard to the third type of programme, non-governmental organizations may inform the Working Group on Enforced or Involuntary Disappearances of their wish to undertake such a programme, indicating the experts or organization they wish to work with. At their request, the Working Group may initiate consultations with the Government concerned. Whenever such consultations have already taken place and an agreement has been reached with national, municipal or other local authorities, the Working Group may take note of the agreement and may recommend the relevant programme to be sponsored by the United Nations, provided that it falls under the terms and spirit of resolution 1992/24;

(d) Sponsorship by the United Nations will not imply any financial involvement in the activities of the programme. It will, however, imply that the programme is considered to respond to the terms of resolution 1992/24 and that the experts and the Government concerned will be committed to respect international human rights standards at all times. The experts will have the legal status of Experts on Mission in accordance with sections 22 and 23 of

article VI of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and will be requested to perform its duties in accordance with general principles governing the activities of such experts.

25. During the first stage of the consultations, the Working Group only addressed organizations or groups specialized in medico-legal or anthropological activities related to forensic science and human rights. The Working Group is, however, aware that, in view of the multidisciplinary nature of these activities, experts in other related disciplines and human rights organizations which promote and sometimes fund such activities or which are involved in several different aspects leading to their accomplishment of forensic work should be contacted as well. Among the international non-governmental organizations, mention should be made of the activities performed in this field by Amnesty International, Human Rights Watch and the Minnesota Lawyers Human Rights Committee, which have been actively involved in the documentation and verification of torture, in the establishment of ethical standards for the medical profession and other professions performing forensic activities and in the exhumation and identification of victims of human rights violations. In addition, some organizations of relatives of victims of human rights violations could provide valuable insight into the technical and practical difficulties encountered when undertaking any kind of forensic activities relating to victims of human rights violations.

26. The Working Group on Enforced or Involuntary Disappearances also included in its report to the Commission on Human Rights information on forensic activities carried out in specific countries in the framework of investigations into cases of disappearances (E/CN.4/1993/25, paras. 50-55, 85, 95, 99-101, 132 and 239).

27. In the conclusions and recommendations formulated in its report, the Working Group included the following:

> "Exhumation and identification of possible victims of human rights violations has proved to be significant in the investigation of cases of disappearances. In compliance with Commission resolution 1992/24, the Working Group has given special attention to the role of forensic experts in this matter. The Working Group will continue to devote its thinking to the topic and expects to receive comments from the Commission on the preliminary scheme which is included in the present report. Consultations will continue during 1993.
>
> "In a number of countries, exhumation and identification of corpses is being carried out by local authorities. In some, the authorities cooperate closely with international forensic teams, an example to be emulated elsewhere. In a few instances, however, forensic teams, whether local or international, have been subjected to reprisals and acts of intimidation. The Working Group expresses its deep concern about this. Any such act is reprehensible as a matter of principle, but in addition the effectiveness of the exercise may be frustrated as a result." (paras. 517-518)

## III. RELEVANT ACTIVITIES BY OTHER UNITED NATIONS BODIES

28. In his report to the Commission on Human Rights, the Special Rapporteur on extrajudicial, summary or arbitrary executions made the following specific recommendation:

> "the Special Rapporteur would like to refer to the moves towards the institution of a standing team of forensic experts who could assist special rapporteurs in assessing, among other things, the reasons for the decease of a person purported to be a victim of extrajudicial, summary or arbitrary execution. They may also provide invaluable assistance in the examination of mass graves or clandestine cemeteries. This was shown clearly during the second mission to Yugoslavia in October 1992, in which two forensic experts participated. The Special Rapporteur wishes to encourage the international community to create a team of forensic experts, as was envisaged in Commission on Human Rights resolution 1992/24." (E/CN.4/1993/46, para. 698).

29. In his report on a mission to investigate allegations of mass graves in the territory of the former Yugoslavia, the Special Rapporteur on extrajudicial, summary or arbitrary executions outlined the practical conditions which must prevail before further investigations into those graves are undertaken. He stated that the exploration and excavation of sites as well as the exhumation and examination of bodies require specialists working on a full-time basis for a considerable period of time. Facilities are needed for the examination and conservation of human remains as well as office space, accommodation, transportation, etc. Funds for the remuneration of the experts and to cover all other costs must be made available. Mass graves containing victims of extrajudicial executions must be regarded as the scene of a crime and therefore treated as such. From the very first visit to a grave until the end of the investigation, the site must be protected so as to preserve the evidence. The personal security of the specialists working at the site must be guaranteed. If mass graves are located in areas that are considered as war zones, those guilty of war crimes may still be present, a factor which may generate serious security problems for those involved in the investigations.

30. Under resolution 780 (1992) of the United Nations Security Council an agreement has recently been signed between the United Nations and Physicians for Human Rights, by which the latter will carry out investigations into a mass grave site located near Vukovar, and into similar mass grave sites as may be agreed upon between the parties with a view to providing the Secretary-General with its conclusions on the evidence of serious breaches of the Geneva Conventions of 1949 and other violations of international humanitarian law committed in the territory of the former Yugoslavia. This agreement, with the necessary changes adapting it to the needs of the different situations in which forensic work will be carried out, might be taken as a basis for future agreements in this field. Its text is reproduced in the annex.

## IV. CONSIDERATIONS FOR FURTHER ACTIVITIES

31. The Working Group on Enforced or Involuntary Disappearances suggested that a number of steps should still be taken in order to complete consultations on this matter, such as consultations with several non-governmental organizations with extensive experience in the field of human rights and forensic science which so far could not be said to have been held or completed. In addition, relevant special rapporteurs and working groups should be more closely involved in the process of consultation, in particular, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture, as well as special rapporteurs or representatives on country situations.

32. In the light of the practical experience gained, in particular in former Yugoslavia, it also appears necessary to study a number of legal and practical issues in more detail, inter alia: measures to be taken in order to protect the sites where remains of possible victims of human rights violations have been found so that evidence is not removed or interfered with; the question of jurisdiction over the sites and the laws applicable; the authority to which the evidence collected and the report on the investigation will be submitted; agreements to be made with the Governments concerned in relation to the above-mentioned matters and also in relation to the protection of the international and national personnel engaged in the forensic activities. The question of the duties involved in the legal status of "Experts on Mission" acquired by the experts on the basis of their participation in activities under United Nations auspices should also be considered with a view to preparing relevant rules to be observed by experts in the accomplishment of their missions.

33. Those issues, as well as others that may be identified, should be taken into consideration in the process of consultation. This may also imply the elaboration of a model for relevant agreements with the Governments concerned in cases in which they had invited or accepted the visit of a forensic team under United Nations auspices. Last, but not least, consultations should also involve States Members of the United Nations, which should be invited to provide comments on the preliminary scheme submitted by the Working Group on Enforced or Involuntary Disappearances, as noted in chapter II of this report.

Annex

COOPERATION SERVICE AGREEMENT
between
the United Nations
and
Physicians for Human Rights

WHEREAS the United Nations Security Council in its resolution 780 (1992) has requested the Secretary-General to establish an impartial Commission of Experts ("Commission") to examine and analyse the information submitted pursuant to its resolutions 771 and 780 (1992) with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia;

AND WHEREAS the Commission on Human Rights in its resolution S-2/1, adopted at its second Special Session, urges the Commission, with the assistance of the Centre for Human Rights, to arrange for an immediate and urgent investigation by qualified experts of a mass grave near Vukovar and other mass grave sites and places where mass killing are reported to have taken place;

AND WHEREAS Physicians for Human Rights, a Non-Governmental Organization with its Office in Boston, USA, has expressed its willingness to make available its experts to assist the Commission in the investigation of the mass grave near Vukovar and of other mass grave sites;

NOW THEREFORE the United Nations and Physicians for Human Rights (the "Parties") have agreed as follows:

Article I

Duration of the Agreement

The Agreement shall commence on 11 December 1992 and shall, unless earlier terminated by either Party, expire on a date to be agreed upon by the Parties upon completion of the investigation of the mass grave near Vukovar and of such other mass grave sites and places where mass killing are reported to have taken place. The Agreement shall in any event terminate upon conclusion of the work of the Commission.

Article II

Obligations of Physicians for Human Rights

1. Physicians for Human Rights shall make available for the duration and purposes of this Agreement, the experts listed in Annex I hereto (hereinafter called the "Experts"). Changes and modifications to the Annex may be made from time to time by agreement between the Parties.

2. The Experts shall carry out investigations of the mass grave site near Vukovar, and of such other mass grave sites as may be agreed upon between the Parties (hereinafter called the "Investigation"). The Investigation shall be carried out in three phases as described in the plan of action attached hereto as Annex II.

3. The Experts shall submit to the Commission periodical reports on their findings. They shall also provide a final report to the Commission, containing the findings and opinions along with all documentary evidence, if any, upon which such findings were based.

4. Physicians for Human Rights shall make available the Experts for the purposes of this Agreement at no cost to the United Nations, except for the facilities expressly provided for in this Agreement. Physicians for Human Rights shall be responsible for payment of all salaries, subsidies, compensation or benefits to which the Experts might be entitled.

5. Physicians for Human Rights shall ensure that each expert provided under this Agreement is covered by adequate medical and life insurance, as well as insurance coverage for service-incurred illness, injury, disability or death.

6. Except to the extent that such liability is covered by existing UN insurance as the Parties shall agree, the United Nations does not accept any liability for claims for compensation in respect of illness, injury or death arising out of the activities performed under this Agreement.

## Article III

## Terms and Obligations of Experts

Physicians for Human Rights undertakes to be bound by the terms and obligations specified below, and shall accordingly ensure that the Experts performing services under this Agreement comply with these obligations:

(a) The Experts shall function under the general supervision and control of the Commission;

(b) They shall perform their functions in full complicance with the mandate of the Commission;

(c) They shall not seek nor accept instructions regarding the services to be performed under this Agreement from any Government or other authority external to the United Nations;

(d) They shall refrain from any conduct which would adversely reflect on the United Nations, and shall not engage in any activity which is incompatible with the aims and objectives of the United Nations or the mandate of the Commission;

(e) The Experts shall exercise their utmost discretion in all matters relating to the Investigation and shall not communicate, at any time, without the authorization of the United Nations, to any Institution not party to this Agreement, person, mass media, Government or other authority external to the

United Nations, any information that has not been made public, and which has become known to them by reason of their association with the United Nations. They shall not use any such information without the authorization of the United Nations and in any event, such information shall not be used for individual profit. This obligation does not lapse upon termination of this Agreement with the United Nations.

## Article IV

## Legal Status of Experts

1. The Experts shall not be considered in any respect as being officials or staff of the United Nations.

2. The Experts shall have the legal status of Experts on Mission in accordance with Sections 22 and 23 of Article VI of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

3. The Experts may be issued a certificate in accordance with Section 26 of Article VII of the Convention.

## Article V

## Copyrights

The United Nations shall have the copyright in any findings contained in the reports submitted to the Commission in accordance with this Agreement, and in any working papers and other documents prepared by the Experts in connection with the Investigation. In no event shall the contents of such reports or documents be published or otherwise made known by the experts to any unauthorized person, without the written consent of the United Nations.

## Article VI

## Facilities to be Provided by the United Nations

1. The United Nations shall provide, through its Protection Force (UNPROFOR), such protection as is required by the Experts for the performance of their functions and as is considered necessary by representatives of UNPROFOR.

2. The United Nations shall provide local transportation for the Experts upon their arrival in Croatia and during the conduct of the Investigation.

3. The United Nations shall provide the Experts with interpreters as may be necessary for the carrying out of the Investigation.

## Article VII

### Consultation

1. The United Nations and Physicians for Human Rights shall consult with each other in respect of any matter(s) that may from time to time arise in connection with this Agreement.

## Article VIII

### Arbitration

1. Any controversy or claim arising out of, or in connection with this Agreement or any breach thereof, shall, unless it is settled amicably by direct negotiations, be referred to arbitration in accordance with the UNCITRAL Arbitration Rules then in force. Such arbitration shall be conducted under the auspices of the International Chamber of Commerce which shall also serve as the Appointing Authority. The Parties shall be bound by the arbitration award rendered in accordance with such arbitration, as the final adjudication of any such controversy or claim.

2. Nothing in this Agreement shall be deemed a waiver, expressed or implied, of the privileges and immunities of the United Nations under the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

## Article IX

### Amendment

This Agreement may be modified or amended only by written agreement between the Parties. Each Party shall give full and sympathetic consideration to any proposal for an amendment made by the other Party.

IN WITNESS THEREOF, the Parties hereto having read and accepted this Agreement have executed it on 11 December 1992.

(Signed)

For the United Nations:
Jacqueline Dauchy
Secretary
Commission of Experts
established pursuant
to Security Council
Resolution 780 (1992)

(Signed)

For Physicians for Human Rights:
Eric Stover
Executive Director

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